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(2)

No. 06-1059

IN THE

Supreme Court of the United States

CANOE MANUFACTURING COMPANY, INC.
and M. ROBERT ULLMAN,

Petitioners,

v.

JOSEPH H. JONES, Esquire and
WILLIAMSON, FRIEDBERG & JONES,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPERIOR COURT OF PENNSYLVANIA

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Respondents object to the Petitioners' Question Presented on the ground that it assumes certain jurisdictional, procedural, legal, and factual premises that are demonstrably unfounded, as established more fully in the body of the present brief in opposition.

Respondents suggest instead the following Questions Presented:

1. Whether 28 U.S.C. § 1254 is an appropriate jurisdictional basis for Supreme Court review of a state court decision by writ of certiorari.

2. Whether a petition for a writ of certiorari requesting Fourteenth Amendment due process and equal protection review of a state court judgment should be denied where neither the Petitioners nor the state courts invoked or discussed the Fourteenth Amendment Due Process and Equal Protection Clauses in the state court proceedings.

3. Whether the Supreme Court may utilize GVR procedures by granting a petition for a writ of certiorari seeking Fourteenth Amendment due process and equal protection review of a state court decision, vacating the state court decision, and remanding to the state court for further consideration by the state court, where neither the Petitioners nor the state courts invoked or discussed the Fourteenth Amendment Due Process and Equal Protection Clauses in the state court proceedings.

4. Whether a federal question is presented under the Fourteenth Amendment Due Process and/or Equal Protection Clauses where Petitioners' failure to meet state court appellate filing deadlines was a result of their disregard of preexisting and controlling state court appellate precedent.

CORPORATE DISCLOSURE STATEMENT

Respondent Williamson, Friedberg & Jones is a law firm that has never had a parent corporation. No publicly held company has ever held any stock in Williamson, Friedberg & Jones.

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JURISDICTION

Petitioners assert that the Supreme Court is vested with jurisdiction pursuant to 28 U.S.C. § 1254. However, 28 U.S.C. § 1254 applies only to petitions for certiorari seeking review of decisions from United States Courts of Appeals. The correct basis for jurisdiction for a petition for a writ of certiorari seeking review of a state court decision would be 28 U.S.C. § 1257(a). However, as established below, Petitioners have not met the jurisdictional requirements of 28 U.S.C. § 1257(a) or, alternatively, have not complied with the Court's prudential requirements associated with 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

Petitioners seek review, by writ of certiorari, from a state court judgment. However, the petition fails to comply with Supreme Court Rule 14.1(g)(i), which requires Petitioners to include in their Statement of the Case a "specification of the stage in the proceedings . . . when the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed on by those courts" as well as "pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears . . . so as to show that the federal question was timely and properly raised and that this Court has jurisdiction. . . ." As discussed more fully below, Petitioners cannot meet this requirement, because they never invoked the United States Constitution in the state court proceedings and no state court addressed federal constitutional issues.

On page 3 of the petition, Petitioners assert that their appeal to the Pennsylvania Superior Court was "summarily dismissed by the Deputy Prothonotary of the Superior Court. . . ." Similarly, on page 11, Petitioners state that "[o]n April 12, 2006, the Superior Court Deputy Prothonotary entered a Per Curiam Order quashing the appeal. App. 77a." Petitioners appear to suggest that it was the Deputy Prothonotary, as distinguished from the Superior Court judges, who quashed the appeal. However, the Order itself states: "The *court* hereby GRANTS the motion to quash." Pet. App. 77a (emphasis added). The Order is not signed by an individual judge or judges but is rather stated to be "PER CURIAM". *Id.* Significantly, the Deputy Prothonotary did not sign the Order but merely performed the administrative and ministerial act of filing it. Accordingly, no basis exists for Petitioners' suggestion that the Deputy Prothonotary ruled on the Motion to Quash.

The remainder of statements on page 3 ("Introduction") of Petitioners' Statement of the Case are rhetorical and conclusory in nature and, as demonstrated below, are refuted by the actual procedural facts of this case.

Pages 4-6 of Petitioners' Statement of the Case set forth Petitioners' version of factual and procedural events that occurred over a period of two decades. These matters are not relevant to any question that would be before the Supreme Court and, indeed, they have nothing to do with even the Petitioners' own formulation of the Question Presented. Rather, these issues were the subject of discovery and motion practice in the Pennsylvania state courts under Pennsylvania law long before the present procedural issue arose. Although it is accordingly not necessary to address these matters in the present brief, it should be observed that Respondents do

not agree with Petitioners' version of these factual, procedural, and Pennsylvania law matters. To take just one example, Petitioners suggest, on page 6, that the decision in the first state court appeal was the unanimous decision of a three-judge Superior Court panel consisting of Judges Klein, Bender, and Olszewski. However, contrary to Petitioners' representation, Judge Bender dissented from the majority's decision and opinion.

Petitioners' discussion of procedural facts relevant to their petition begins on page 7 of their Statement of the Case. The Court of Common Pleas of Schuylkill County, Pennsylvania (sometimes referred to hereinafter as "Court of Common Pleas") granted summary judgment in favor of Respondents on December 30, 2005. Pet. App. 10a, 12a-19a. The Court of Common Pleas docket contains two entries for December 30, 2005. One entry states: "ORDER-GRANTED". The other entry for December 30, 2005 states: "OPINION AND ORDER OF COURT-COPIES MAILED". Pet. App. 10a. (Note: Although page 10a of Petitioners' Appendix incorrectly states the filing date of the latter entry as "12/20/2005", the original docket stated "12/30/2005". This is not disputed, as Petitioners state on page 7 of their petition that the latter docket entry was dated December 30, 2005.)

A Schuylkill County Court of Common Pleas docket entry reflects that a "PRAECIPE FOR ENTRY OF JUDGMENT" was filed on January 9, 2006. Pet. App. 10a. The reproduction of the Court of Common Pleas docket on page 10a of Petitioners' Appendix is, however, incomplete, because the original docket shows that a fee of $9.00 was paid by Respondents in connection with the praecipe for entry of judgment. Indeed, an accurate reproduction of the docket

in this case would show that such a fee payment is unusual, thus reflecting the fact that a praecipe for entry of judgment involves an administrative procedure for closing the Schuylkill County Court of Common Pleas docket.

A second entry on the Schuylkill County Court of Common Pleas docket for January 9, 2006 states: "JUDGMENT ENTERED-NOTICES SENT". Pet. App. 10a.

It should be observed that neither the foregoing docket entries nor any of the papers associated therewith made any explicit reference to Pennsylvania Rule of Civil Procedure 236. Thus, Petitioners' statement on pages 7-8 of the petition that the January 9, 2006 notice was "a Notice sent pursuant to Pa. R. Civ. P. 236" is a legal argument by Petitioners and not a designation in the documents themselves. Indeed, the document that Petitioners contend was the Rule 236 notice states: "If you have any questions regarding this Notice, please contact the filing party," which it identified as Plaintiff M. Robert Ullman and his counsel in the trial court proceedings. Pet. App. 21a-22a. In other words, if Petitioners were to have any questions about the notice, they were to contact themselves. (Note: Undersigned counsel of record for Respondents, who was the attorney who filed the praecipe for entry of judgment, did not prepare the notice reproduced on pages 21a and 22a of Petitioners' Appendix and, in fact, never received a copy of it from the Schuylkill County Court of Common Pleas but rather saw it for the first time when it was later attached to one of Petitioners' filings.)

Having arrived at their legal conclusion that the January 9, 2006 notice (as distinguished from the December 30, 2005 notice discussed *supra*) was the Pa. R. Civ. P. 236 notice, Petitioners go on to say that "[o]n February 7, 2006, 29 days

after Rule 236 Notice was noted on the docket, Canoe and Ullman filed their Notice of Appeal. . . ." Pet. 8 (emphasis added). However, as established above, no explicit reference—either on the docket itself or in the associated papers—was made to Rule 236. The subject January 9, 2006 docket entry merely stated "JUDGMENT ENTERED-NOTICES SENT". Pet. App. 10a. Meanwhile, the December 30, 2005 docket entries had already stated: "ORDER-GRANTED" (referring to the grant of summary judgment) and "OPINION AND ORDER OF COURT-COPIES MAILED". Pet. App. 10a (note the date correction of the latter entry discussed *supra*).

Pages 9-10 of the petition contain an interesting, albeit irrelevant, discussion of Superior Court internal operating procedures. Petitioners then purport to characterize Respondents' Motion to Quash Petitioners' appeal to the Pennsylvania Superior Court. (Respondents' Motion to Quash is set forth on pages 39a-46a of Petitioners' Appendix and speaks for itself.) Petitioners take issue with the legal position set forth in the Motion to Quash that the Rule 236 notice was the December 30, 2005 notice. As established *supra*, neither the December 30, 2005 notice nor the January 9, 2006 notice contained any explicit reference to Pa. R. Civ. P. 236, and the question of which notice was the Rule 236 notice is a matter of Pennsylvania law.

Petitioners filed an Answer to the Motion to Quash in which they argued, inexplicably, that the December 30, 2005 Order was not a final order because it did not dispose of all claims and all parties. Pet. App. 47a-63a. Petitioners' argument was based on the fact that the Court granted summary judgment to Respondents on some but not all of the grounds set forth in the motion for summary judgment.

However, the result of the December 30, 2005 summary judgment was that *all claims* of *all Plaintiffs (the Petitioners)* were extinguished. No counterclaims existed in the case at this juncture. Nevertheless, Petitioners argued that the December 30, 2005 Order was not final, because the Schuylkill County Court of Common Pleas had not addressed some of the arguments in Respondents' motion for summary judgment. In making this and other arguments, Petitioners' Answer to the Motion to Quash never once cited any federal constitutional provision, statute, regulation, or decision.

Moreover, Petitioners' Answer to the Motion to Quash failed to make the argument, emphasized in the pending petition for a writ of certiorari, that the December 30, 2005 notice was not the Pa. R. Civ. P. 236 notice. To the contrary, Petitioners *admitted* that the December 30, 2005 notice *was* the Rule 236 notice. Numbered paragraph 10 of the Respondents' Motion to Quash alleged: "*The [summary judgment] Order was docketed on December 30, 2005 and Rule 236 Notice was sent the same day.* (See Exhibit 'A,' Docket Entries, p. 2; containing the notation 'COPIES MAILED')." Pet. App. 41a (emphasis added). In their Answer to the Motion to Quash, Petitioners responded: "*Admitted.*" Pet. App. 48a (emphasis added).

Respondents thereafter filed a Reply to Petitioners' Answer to the Motion to Quash. Pet. App. 64a-76a.

On April 12, 2006, the Pennsylvania Superior Court entered a per curiam Order granting the Motion to Quash. Pet. App. 77a. The Order stated simply and without opinion: "The *court* hereby GRANTS the motion to quash." *Id.* (emphasis added). It was signed "PER CURIAM". *Id.* There is no indication that the Superior Court Prothonotary or

Deputy Prothonotary ruled on the Motion to Quash, and the "per curiam" designation indicates that it was the decision of a panel of three judges as distinguished from a decision of a motions judge. Petitioners' statement that "the decision may well have been made by one judge relying on the reasoning of one Staff attorney" (petition 12) is unsupported in the record and is, in any event, irrelevant, since Petitioners do not argue that the decision of a single motions judge on this issue would violate the Constitution of the United States.

Petitioners thereafter filed what they styled an "Application for Reargument Before a Court *En Banc* of Order Improvidently Quashing Appeal" in the Pennsylvania Superior Court. Pet. App. 78a-94a. As indicated in the Table of Citations included with this Application, Petitioners failed to cite any federal constitutional provision, statute, regulation, or decision in their Application. *Id.* 81a. However, the Application now raised, for the first time, a Pennsylvania state law issue regarding Pa. R. Civ. P. 236 and made an argument (involving, *inter alia*, ad hominem attacks on Respondents' counsel) that directly contradicted their previous admission, discussed *supra*, that the December 30, 2005 notice was the Rule 236 notice. Pet. App. 83a-92a

In a per curiam Order filed May 5, 2006, the Pennsylvania Superior Court denied the Petitioners' Application for Reargument. Pet. App. 107a.

Petitioners then filed, in the Supreme Court of Pennsylvania, a Petition for Allowance of Appeal. Pet. App. 108a-129a. Again, as indicated in the Table of Citations of this document, Petitioners failed to cite any federal constitutional provision, statute, regulation, or decision. *Id.* 111a-112a. Respondents thereafter filed a Brief in Opposition

to Allowance of Appeal. Respondents' Brief in Opposition observed, *inter alia*, that Petitioners never raised the Pa. R. Civ. P. 236 argument until they sought reargument in the Pennsylvania Superior Court and that they specifically admitted, in their Answer to the Motion to Quash, that the Rule 236 notice was sent on December 30, 2005. Pet. App. 139.

On November 1, 2006, the Pennsylvania Supreme Court denied Petitioners' Petition for Allowance of Appeal. Pet. App. 148a. Thereafter, Petitioners filed the pending petition for a writ of certiorari.

REASONS FOR DENYING THE PETITION

I. SUPREME COURT JURISDICTION CANNOT BE PREDICATED UPON 28 U.S.C. § 1254 WHERE THE PETITIONERS SEEK REVIEW OF A STATE COURT JUDGMENT.

Petitioners invoke 28 U.S.C. § 1254 as the jurisdictional basis for their petition. However, 28 U.S.C. § 1254 applies, by its plain language, only to review, by writ of certiorari, of decisions of United States Courts of Appeals. Petitioners seek review of a decision of the Pennsylvania Superior Court, not a decision of a United States Court of Appeals. Accordingly, jurisdiction could only be predicated upon 28 U.S.C. § 1257(a). As explained *infra*, the petition does not meet the jurisdictional requirements of 28 U.S.C. § 1257(a) and/or the Court should deny the writ on the basis of prudential principles associated with 28 U.S.C. § 1257(a).

II. THE WRIT SHOULD BE DENIED, BECAUSE NEITHER THE PETITIONERS NOR THE STATE COURTS INVOKED OR DISCUSSED THE FOURTEENTH AMENDMENT DUE PROCESS AND EQUAL PROTECTION CLAUSES IN THE STATE COURT PROCEEDINGS.

The Supreme Court has certiorari jurisdiction over state court judgments only pursuant to 28 U.S.C. § 1257(a), which provides in pertinent part: "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari . . . where any title, right, privilege, or immunity is specially set up or claimed under the Constitution . . . of . . . the United States." Although Petitioners never argued in the state court proceedings a violation of the United States Constitution, their pending petition asserts, without substantial argument, that their rights have been violated under the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment.

As established in the Statement of the Case, *supra*, Petitioners never cited, in the state court proceedings, any federal constitutional provision, statute, regulation, or decision with regard to any matter relevant to their petition. Although federal law was discussed in the trial court with reference to the bankruptcy issue raised in the second motion for summary judgment, the Petitioners raise no bankruptcy issue in their petition, nor could they raise any such issue given the procedural posture of this case. With regard to their current citation of the Fourteenth Amendment Due Process and Equal Protection Clauses, Petitioners had ample opportunities to invoke these federal constitutional provisions in their Answer to the Motion to Quash filed in the Pennsylvania Superior Court, in their Application for Reargument filed in the Pennsylvania Superior

Court, and in their Petition for Allowance of Appeal in the Pennsylvania Supreme Court. However, Petitioners never once cited those Clauses or any decisional authority discussing those Clauses.

The Court has recently summarized the jurisdictional or prudential principles applicable to the present petition as follows:

> Congress has given this Court the power to review "[f]inal judgments or decrees rendered by the highest court of a State in which a decision could be had . . . where any . . . right . . . is *specially set up or claimed* under the Constitution or the treaties or statutes of . . . the United States." 28 U.S.C. § 1257(a) (emphasis added). Under that statute and its predecessors, this Court has almost unfailingly refused to consider any federal-law challenge to a state-court decision unless the federal claim "was either addressed by or properly presented to the state court that rendered the decision we have been asked to review." *Adams v. Robertson*, 520 U.S. 83, 86 (1997) (per curiam); *see also Illinois v. Gates*, 462 U.S. 213, 218 (1983) (tracing this principle back to *Crowell v. Randell*, 35 U.S. 368, 10 Pet. 368, 391 (1836), and *Owings v. Norwood's Lessee*, 9 U.S. 344, 5 Cranch 344 (1809)).
>
> Petitioner's brief in the State Supreme Court did not properly present his claim as one arising under federal law. In the relevant argument, he did not cite the Constitution or even any cases directly construing it, much less any of this Court's cases.

Howell v. Mississippi, 543 U.S. 440, 443 (2005) (per curiam) (emphasis added by *Howell*, footnote omitted).

The question of whether the foregoing "presentation requirement" is jurisdictional or prudential is unsettled, but, as in *Howell*, "even treating the rule as purely prudential, the circumstances here justify no exception." 543 U.S. at 445-46. In *Howell*, the Court dismissed the writ of certiorari as improvidently granted. *Id.* at 446. The Court should similarly deny the pending petition on the basis of the foregoing analysis and the related failure of the Petitioners to comply with Supreme Court Rule 14.1(g)(i).

III. THE COURT SHOULD NOT UTILIZE GVR PROCEDURES WHERE NEITHER THE PETITIONERS NOR THE STATE COURTS INVOKED OR DISCUSSED THE FOURTEENTH AMENDMENT DUE PROCESS AND EQUAL PROTECTION CLAUSES IN THE STATE COURT PROCEEDINGS.

The petition requests the issuance of a "GVR" (granted, vacated, and remanded) order "to remedy the . . . violation of Petitioners' Due Process and Equal Protection rights . . . ." Petition i (Question Presented for Review). As demonstrated above, however, neither the Petitioners nor the state courts invoked or discussed either the Due Process Clause or the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution in the state court proceedings. GVR practice may be broad, but it lacks a jurisdictional or prudential foundation when no relevant federal question was addressed in the state court proceedings of which Petitioners seek Supreme Court review.

This case is, to say the least, not the usual situation in which the Court invokes its GVR jurisprudence:

> [O]ver ninety-seven percent of the GVRs issued by the Court (thirty-seven out of thirty-eight remands) during 2003 were based upon intervening Supreme Court precedent, and over ninety-eight percent of GVRs during 2002 and 2001 (sixty-three out of sixty-four and eighty-three out of eighty-four cases, respectively) were similarly based upon intervening Supreme Court precedent.

Shaun P. Martin, *Gaming the GVR*, 36 Ariz. St. L.J. 551, 558 n.43 (Summer, 2004).

No intervening Supreme Court precedent is involved in this case, and, indeed, no intervening precedent of any kind has been cited by Petitioners.

The petition cites *Lawrence v. Chater*, 516 U.S. 163 (1996), in support of its request for GVR review. However, the per curiam opinion in *Lawrence* stated that "we believe that this Court has the power to remand to a *lower federal court* any case *raising a federal issue that is properly before us in our appellate capacity.*" *Id.* at 166 (emphasis added). In contrast, the present case is a request for review of a *state court decision* that is *not*, as demonstrated *supra*, properly before the Supreme Court in its appellate capacity. Moreover, *Lawrence* involved an intervening development, i.e., a new legal position that was taken by the Commissioner of Social Security (the respondent in that case). In fact, the Commissioner of Social Security, in his response to the petition for a writ of certiorari, "invites us to grant certiorari, vacate the judgment below, and remand the case (GVR) so

that the Court of Appeals may either decide it in light of the Commissioner's new statutory interpretation or remand the case to the Commissioner for reconsideration in light of that interpretation." *Id.* at 165. Under those circumstances, the Court agreed that a GVR order was appropriate. *Id.* at 165-66. However, no such procedural scenario exists with regard to the instant petition.

In *Lords Landing Village Condominium Council v. Continental Insurance Company*, 520 U.S. 893 (1997), the Court issued a GVR order in a diversity case where the Fourth Circuit Court of Appeals decided a Maryland state law issue without the benefit of a then recent decision of the highest state court in Maryland that cast doubt on the Fourth Circuit's state law holding. Again, the instant case involves no such procedural scenario.

The Court recently issued a GVR order with respect to a decision of the West Virginia Supreme Court of Appeals in a criminal case. *Youngblood v. West Virginia*, __ U.S. __, 126 S. Ct. 2188 (2006). However, in *Youngblood*, the defendant "clearly presented a federal constitutional *Brady* claim to the State Supreme Court . . . as he had to the trial court. . . ." 126 S. Ct. at 2190. In the present case, Petitioners failed to present their Fourteenth Amendment due process and equal protection arguments to any state court.

Therefore, the Court should decline to issue a GVR order in the instant case. The Court lacks subject matter jurisdiction to grant a GVR order and/or should invoke its prudential jurisprudence to deny a GVR order where Petitioners failed, in the state court proceedings, to invoke the federal constitutional provisions upon which they now rely.

IV. NO FEDERAL QUESTION IS PRESENTED UNDER THE FOURTEENTH AMENDMENT DUE PROCESS AND/OR EQUAL PROTECTION CLAUSES WHERE PETITIONERS' FAILURE TO MEET STATE COURT APPELLATE DEADLINES WAS A RESULT OF THEIR DISREGARD OF PREEXISTING AND CONTROLLING STATE COURT APPELLATE PRECEDENT.

As established *supra*, the petition should be denied, because neither Petitioners nor the state courts invoked or discussed the Fourteenth Amendment Due Process or Equal Protection Clauses in the state court proceedings. In addition or in the alternative, the petition presents no substantial federal question under the Fourteenth Amendment Due Process and Equal Protection Clauses. In fact, the petition nowhere cites any decisional authority, or even elaborates any argument, to support any theory of violation of either the Due Process Clause or the Equal Protection Clause of the Fourteenth Amendment. Although the petition, for the first time in the history of this case, now mentions the Fourteenth Amendment Due Process and Equal Protection Clauses, it fails to make any federal constitutional argument and cites no decisional authority supporting any federal constitutional theory.

Petitioners' analysis in this Court, like their analysis in the state courts below, relies solely on argumentation regarding state law issues. Although it hardly seems necessary to respond in this Court to Petitioners' state law arguments, the present brief addresses them in order to correct certain misimpressions the Petitioners advance regarding the procedural history of this case and the applicable state law.

Rule 236 of the Pennsylvania Rules of Civil Procedure provides in pertinent part:

> (a) The prothonotary shall immediately give written notice of the entry of . . .
>
> (2) any other order or judgment to each party's attorney of record or, if unrepresented, to each party. The notice shall include a copy of the order or judgment.
>
> . . . .
>
> (b) The prothonotary shall note in the docket the giving of the notice. . . .

The Schuylkill County Court of Common Pleas granted summary judgment in favor of Respondents on December 30, 2005. Pet. App. 10a, 12a-19a. That Court's docket contains two entries for December 30, 2005. One entry states: "ORDER-GRANTED". The other entry for December 30, 2005 states: "OPINION AND ORDER OF COURT-COPIES MAILED". Pet. App. 10a. (Note: Although page 10a of Petitioners' Appendix incorrectly states the filing date of the latter entry as "12/20/2005", the original docket stated "12/30/2005". This is not disputed, as Petitioners state on page 7 of their petition that the latter docket entry was dated December 30, 2005.)

The December 30, 2005 entries make it clear that the Pa. R. Civ. P. 236 requirements were met in the docket entries for that date. Although those docket entries did not explicitly mention Rule 236, neither did the January 9, 2006 docket entries on which Petitioners now rely. (See the Statement of the Case, *supra*.) Rule 236 does *not* require any explicit

reference to that rule in the docket entry. Accordingly, it is not surprising that Petitioners *admitted*, in their Answer to the Respondents' Motion to Quash the appeal to the Pennsylvania Superior Court, that *the Pa. R. Civ. P. 236 notice was, in fact, the December 30, 2005 notice*. Numbered paragraph 10 of the Respondents' Motion to Quash alleged: "*The [summary judgment] Order was docketed on December 30, 2005 and Rule 236 Notice was sent the same day.* (See Exhibit 'A,' Docket Entries, p. 2; containing the notation 'COPIES MAILED')." Pet. App. 41a (emphasis added). In their Answer to the Motion to Quash, Petitioners responded: "*Admitted.*" Pet. App. 48a (emphasis added). Petitioners did not make their current Rule 236 argument until *after* the Superior Court quashed the appeal in reliance upon their admission. Having waived this argument in their Answer to the Motion to Quash, Petitioners cannot legitimately claim that they were denied their rights under the Fourteenth Amendment Due Process and Equal Protection Clauses.

Petitioners rely on *Frazier v. City of Philadelphia*, 557 Pa. 618, 735 A.2d 113 (1999), but that decision does not support their position. In *Frazier*, a final order

> was entered on the docket on April 8, 1997, and notice of the order was mailed to and received by the parties. The prothonotary, however, failed to indicate on the docket, as required by Rule 236 of the Pennsylvania Rules of Civil Procedure, that notice of the order had been provided to the parties.

557 Pa. at 619-20, 735 A.2d at 114. In contrast, as demonstrated *supra*, the Prothonotary of Schuylkill County, in the present case, entered the following two items on the

docket for December 30, 2005: "ORDER-GRANTED" and "OPINION AND ORDER OF COURT-COPIES MAILED". It is undisputed that these docket entries refer to the grant of the summary judgment to Respondents on December 30, 2005. As Petitioners admitted in their Answer to the Motion to Quash, the December 30, 2005 "COPIES MAILED" docket notation properly reflected that Rule 236 notice was sent the same day.

Moreover, the procedural scenario in *Frazier* was different from that of the present case. In *Frazier*, the subject of the Rule 236 notice was a default judgment. The present case involves a summary judgment. The Pennsylvania Superior Court (the intermediate Pennsylvania appellate court for nongovernmental matters) issued a caveat to all Pennsylvania attorneys in a famous April 23, 2004 published decision: "*We advise the bar to be wary of a common pitfall[:] the appeal must be filed within thirty days of the Rule 236 notice of summary judgment, not a later-filed praecipe to enter judgment. Gartland v. Rosenthal*, 2004 Pa. Super. 134, 850 A.2d 671, 671 n.1 (2004). This has long been the rule in Pennsylvania:

> The subsequent praecipe for judgment was a meaningless act because the [summary] judgment had already been entered. . . . Because the appeal from the summary judgment was filed on August 15, 1985, more than 30 days after the entry of the judgment on July 8, 1985, the present appeal is untimely and must be quashed.

Progressive Home Fed. Sav. & Loan Ass'n v. Kocak, 359 Pa. Super. 120, 123, 518 A.2d 808, 809 (1986); *accord Feidler v. Morris Coupling Co.*, 2001 Pa. Super. 294, 784 A.2d 812,

814 n.1 (2001) ("In an abundance of caution, Morris Coupling sought entry of judgment on the order granting its motion for summary judgment. Since the order granting summary judgment disposed of the entire matter, the order itself was final and appealable.").

Petitioners' reliance on *Hepler v. Urban*, 518 Pa. 482, 544 A.2d 922 (1988) ("*Hepler I*"), and *Hepler v. Urban*, 530 Pa. 375, 609 A.2d 152 (1992) ("*Hepler II*"), is misplaced. *Hepler I* reversed a summary judgment where there was "no notation in the docket that notice was given concerning entry of the order granting appellees' motion for summary judgment." 518 Pa. at 485, 544 A.2d at 923. In contrast, as established *supra*, a notation on the docket in the present case stated that copies of the Order granting summary judgment were mailed on December 30, 2005. *Hepler II* merely held that a notation on a blueback attached to a summary judgment order was not a notation in the docket that notice of the summary judgment had been given. 530 Pa. at 380, 609 A.2d at 152. Since a December 30, 2005 notation in the docket in the present case states that copies of the summary judgment order were mailed on that date, *Hepler II* is also inapposite.

Thus, Petitioners' entire argument regarding *stare decisis* is irrelevant. The quashal of the Petitioners' appeal in the present case was entirely consistent with Pennsylvania precedent. Moreover, the United States Supreme Court *stare decisis* decisions cited in the petition involve only *stare decisis* issues at the level of the Supreme Court. None of the decisions cited in the petition stands for the proposition that the Supreme Court will find a violation of the Fourteenth Amendment for an alleged defect in state court *stare decisis* analysis. Indeed, the approach suggested by Petitioners would

be inconsistent with the principles of federalism that are essential to our form of government. Insofar as the petition cites Pennsylvania law on *stare decisis*, that is a matter for the Pennsylvania state courts, not for the Supreme Court of the United States.

Petitioners would have the Court issue a GVR order on the basis of Pennsylvania law. However, as established above, even the requirements of Pennsylvania law were met in this case. Petitioners' failure to comply with pre-existing and controlling Pennsylvania law precedent was the sole cause of their untimely filing of an appeal to the Pennsylvania Superior Court. Moreover, the petition invokes the Fourteenth Amendment Due Process and Equal Protection Clauses but does not discuss Fourteenth Amendment due process and equal protection principles. The petition fails to cite any Supreme Court or other authority holding that the type of procedural scenario involved in this case violates the Fourteenth Amendment. Accordingly, the petition fails to raise a substantial federal question, and the writ should be denied for this additional reason.

CONCLUSION

On the basis of the foregoing arguments and authorities, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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